



October 9, 2000

Ms. Laura E. Enriquez-Guerra  
Records Management Specialist  
Ysleta Independent School District  
9600 Sims Drive  
El Paso, Texas 79925-7225

OR2000-3871

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140648.

The Ysleta Independent School District ("YISD") received a request for an investigative file concerning the actions of a teacher. You claim that the requested information is excepted from disclosure under sections 552.101, 552.026, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that portions of the submitted information contain student information that is excepted from disclosure under sections 552.026 and 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. "Education records" under FERPA are records that

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); *see* Open Records Decision Nos. 462 at 15 (1987), 447 at 2-3 (1986).

Here, the investigative file contains the handwritten notes of students, student information sheets, a letter from a parent of a student, and several memoranda concerning a teacher and his students. We find these documents constitute education records for the purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Consequently, FERPA requires YISD to delete information from the documents in the investigative file to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision No. 206 at 2 (1978); *see* Open Records Decision No. 332 at 3 (1982). This identifying information is deemed confidential under FERPA and must be withheld from disclosure. We have marked the information contained within the investigative file, including the entire handwritten notes of the students, the entire student information sheets, and portions of the parent letter, that qualifies as identifying information and therefore must be withheld. *See* 34 C.F.R. § 99.3 (defining personally identifiable information); Open Records Decision No. 224 (1979). However, the remainder of the information does not qualify as identifying information and may not be withheld under sections 552.026 and 552.114.

You also contend that information within the investigative file is confidential because the investigation has been sent to the superintendent of schools and remains incomplete. However, you cite no authority, nor are we able to find any, to support this proposition. Therefore, while you must withhold the marked information as confidential student identifying information, the remainder of the information in the investigative file must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/er

Ref: ID# 140648

Encl: Submitted documents

cc: Mr. Thomas E. Stanton  
Stanton & Antcliff  
718 Myrtle Avenue  
El Paso, Texas 79901  
(w/o enclosures)